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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

EMELITA SOLARTE, Plaintiff and Appellant, v. WASHINGTON MUTUAL BANK et al., Defendants and Respondents.	H028002 (Monterey County Super. Ct. No. M63392)

Emelita Solarte appeals after the trial court entered judgment in favor of defendants Washington Mutual Bank (Washington Mutual) and California Reconveyance Company (California Reconveyance). Plaintiff asserts that the trial court erred in admitting defendants' trial exhibits, erred in refusing to enter certain evidence she sought to introduce at trial, erred in refusing her request to continue the trial and erred in entering judgment in favor of defendants. For the reasons stated below, we find no error and shall affirm the judgment.

FACTS[1]

In 1995, Jaime Solarte, Carlos Nocon and Edwin Estores purchased real property located at "1860 Delancey Drive"[2] in Salinas, California. The purchase was financed by

[1] The following facts are taken from the transcript of the August 10, 2004 court trial.

[2] It appears a typographical error was made in connection with preparing the loan documents, all of which list the (incorrect) address of 1860 Delancey Drive, rather than (continued)

a promissory note, secured by a deed of trust, executed in favor of Coast Federal Bank.[3] In 1996, Edwin Estores went off the title and plaintiff, along with Leonora Nocon and Romel Nocon, were added to the title. However, none of those who were added to the title in 1996, including plaintiff, expressly assumed any obligations under the loan.

The deed of trust contained the following provision: "Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ('Funds') for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property. . . ." The adjustable mortgage loan rider, which amends and supplements the deed of trust, also provides, as follows: "If Lender shall so demand in writing, subject to applicable law or regulation, Borrower shall pay to Lender, in addition to any other payments required hereunder, on the day monthly payments are due under the Note, until the Note is paid in full, a sum ('Funds') for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property. . . ."

In 1999, none of the property owners paid the annual property taxes and assessments assessed on the property.[4] According to plaintiff, the tax collector's office would not accept payment of the "property tax only," rather than the full amount assessed, and plaintiff refused to pay the entire amount. In 2000, neither plaintiff nor any of the other property owners paid the property taxes and assessments.

1861 Delancey Drive. However, there is no dispute that the borrowers and plaintiff received all relevant notices from Washington Mutual over the lifetime of the loan. In addition, the notice of default and election to sell under deed of trust was served on the borrowers at both addresses.

[3] Coast Federal Bank is the predecessor in interest to Washington Mutual.

[4] Although the record is not particularly clear on this point, it appears that plaintiff disputed certain assessments which had been added to the property tax bill and refused to pay those assessments.

On November 26, 2001, after discovering that the 1999 and 2000 property taxes and assessments were delinquent, Washington Mutual notified the borrowers that it would pay the delinquency and notified them again once it had actually paid the delinquent property taxes. Washington Mutual then set up an escrow account and offered the original borrowers[5] the option of either paying off the lump sums Washington Mutual had advanced or paying an increased amount towards the mortgage each month.

Plaintiff admitted receiving Washington Mutual's notice, dated March 1, 2002, that the monthly mortgage payment would increase to $1,845.54 because it had paid the delinquent property taxes. However, plaintiff believed that the property taxes and the mortgage held by Washington Mutual were "separate" and that Washington Mutual had no right to pay the delinquent taxes in the first instance. Thus Washington Mutual had no right to add those amounts to the mortgage.

No mortgage payments were made to Washington Mutual in either March or April of 2002. On April 5, 2002, plaintiff received a notice of intent to foreclose.

In May 2002, plaintiff mailed Washington Mutual a payment of $534.24.[6] As that was less than the amount due, Washington Mutual placed the funds in a "suspense account" and notified the borrowers that, although the amount submitted was incorrect, the funds would be applied to the loan in accordance with the borrowers' instructions. In June 2002, plaintiff mailed Washington Mutual a check in the amount of $1,068.58. Washington Mutual also placed this check in the borrowers' "suspense account."

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[5] The original borrowers were Jaime Solarte, Carlos Nocon and Edwin Estores. Plaintiff never formally assumed any obligations under the promissory note, although the borrowers apparently gave her authority to make all the payments on that loan and communicate with Washington Mutual regarding the loan.

[6] Plaintiff testified that she arrived at this figure by independently calculating what she believed was the "correct" amount due to Washington Mutual.

A "Notice of Default and Election to Sell under Deed of Trust" was recorded on June 24, 2002 and served on the borrowers on June 28, 2002.[7] The notice of default indicated that the amount due and owing, as of June 18, 2002, was $8,716.74, and further advised that the amount due would "increase until your account becomes current." Plaintiff admitted that she received an envelope from California Reconveyance in June 2002, but claimed she did not open the envelope because she did not "know that company."

In July 2002, plaintiff again mailed Washington Mutual a payment in the amount of $1,068.58. Because the loan was now in foreclosure and the amount tendered was less than the amount needed to bring the account current, Washington Mutual returned the check.[8] On July 5, 2002, Washington Mutual mailed the borrowers a loss mitigation prequalification letter, urging the borrowers to contact Washington Mutual to work out payment arrangements for the delinquent loan. Washington Mutual sent similar letters to the borrowers approximately once a month thereafter until November 2002.

Plaintiff did not contact Washington Mutual to request a repayment schedule, although she did request a demand/payoff statement, which was sent to her on July 17, 2002. Pursuant to the demand/payoff statement, the loan could be paid in full by tendering $145,691.75 to Washington Mutual by July 31, 2002. Plaintiff did not pay off the loan by July 31, 2002, although she testified that she attempted unsuccessfully to refinance the property, through Washington Mutual and Bank of America.

On November 20, 2002, a "Notice of Trustee's Sale" was recorded and served on the borrowers. The trustee's sale was noticed for December 16, 2002.

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[7] California Reconveyance recorded and served the notice of default on behalf of Washington Mutual.

[8] Once a loan was placed in foreclosure, Washington Mutual would only accept "[f]ull reinstatement of all payments due and owing at the time" and would not accept partial payments.

Plaintiff claims that she first learned of the June 2002 notice of default in December 2002 when a realtor came by to look at the property. The realtor showed plaintiff a copy of the notice of default, and the next day, plaintiff sent Washington Mutual a check for $8,716.74. Washington Mutual does not have a record of actually receiving that check, but it is undisputed that the check was never negotiated. Christa Million-Ven, a research analyst at Washington Mutual, testified that even if plaintiff had sent Washington Mutual a personal check in that amount, Washington Mutual would not have accepted it, for two reasons. One, Washington Mutual would not accept a personal check while the property was in foreclosure and two, the amount required to reinstate the loan in December 2002 was $20,559.49, not $8,716.74.

Plaintiff continued to send checks to Washington Mutual, even after the property was sold on December 16, 2002. Washington Mutual returned all of those checks.

On January 29, 2003, plaintiff filed a complaint against Washington Mutual and California Reconveyance, among other defendants, setting forth causes of action for negligence, breach of contract, breach of the implied covenant of good faith and fair dealing, breach of statutory foreclosure requirements, breach of the Soldiers' and Sailors' Civil Relief Act of 1940 and declaratory relief.

The matter came on for trial on August 10, 2004. Before trial commenced, plaintiff's counsel asked to withdraw from her representation, citing "irremediable breakdowns in the communications." The following exchange then took place between the court and plaintiff:

"THE COURT: Miss Solarte, do you want to be your own lawyer in this case today? Do you want to represent yourself?

"[PLAINTIFF]: Because I am refuse to him. I sent you letter last July 26, because when I got box from his office, what he said to me is just if he will represent me in court, all he have to say is just against to me.

"I felt different because I hired attorney to be my legal counsel to advise to me, and to--to do the best to help to defense our rights in this situation. [*sic*]

"THE COURT: Well, maybe he has done that: Maybe you just disagree with him; maybe you just don't agree with his legal analysis.

"[PLAINTIFF]: His analysis, like I said in this letter before on July 22nd, before the settlement, July 23rd, I went to his--

"THE COURT: I don't want to get into a lot of personal relationships with you. I just want to know: Do you want to be your own lawyer today? Do you want to not have an attorney represent you?

"[PLAINTIFF]: Yes, just to express the situation is that we had the problems that--

"THE COURT: I just want to know--we're going to go ahead with the trial today. And the only question is whether the lawyer represents you or you represent yourself.

"[PLAINTIFF]: I represent myself, sir.

"THE COURT: You want to represent yourself?

"[PLAINTIFF]: Yes.

"THE COURT: Do you understand we're going forward with the trial today? I'm not going to continue the case. You know that, don't you.

"[PLAINTIFF]: I didn't understand, you know.

"THE COURT: I'm not going to continue the case. The question is whether you want to be your own--act as your own lawyer today, or do want want [*sic*] the attorney to act as your attorney?

"[PLAINTIFF]: If he will continue, then we won't have a continuance trial?

"THE COURT: Well, it has to be today.

"[PLAINTIFF]: Either him or myself?

"THE COURT: Exactly.

"[PLAINTIFF]: Okay.

"THE COURT: What would you prefer?

"[PLAINTIFF]: Okay. Will prefer to myself.

"THE COURT: All right. Then I will relieve counsel as your attorney as to [plaintiff] only."

At the conclusion of the trial, the court found that, pursuant to the deed of trust, Washington Mutual was permitted to pay unpaid property taxes and assessments on the property, establish an escrow account and seek recovery of those payments from the borrowers. The court also found that plaintiff was on notice that the loan was in default and failed to take advantage of the opportunities offered to cure the default. As the court found that plaintiff had failed to prove her case against Washington Mutual and California Reconveyance by a preponderance of the evidence, judgment was entered in favor of defendants.

DISCUSSION

A. Identity of Parties to the Appeal

Preliminarily, we clarify who the appellant is in this case, given that the Notice of Appeal states that the appeal is brought by "Emelita Nocon Solarte et al."

Since the passage of the State Bar Act in 1927, it has been well settled that, while persons may represent their own interests in legal proceedings, unless they are an active member of the state bar, they may not represent another person in this State. (*Drake v. Superior Court* (1994) 21 Cal.App.4th 1826, 1830.) In short, one cannot appear in propria persona for another person. (*Ziegler v. Nickel* (1998) 64 Cal.App.4th 545; *Abar v. Rogers* (1981) 124 Cal.App.3d 862 [nonlawyer husband may not prosecute action in propria persona for his wife].)

Plaintiffs below were Jamie Solarte, Emelita Solarte, Carlos Nocon, Leonora Nocon and Romel Nocon. At trial, Emelita Solarte proceeded in propria persona, while the remaining plaintiffs were represented by attorney Lauridsen. Emilita Solarte alone signed the notice of appeal, although the document purports to be on behalf of "Emelita

Nocon Solarte et al." Since she is not an attorney, her signature on behalf of the other plaintiffs is ineffective to make them parties to this appeal. Consequently, she is the sole appellant here.

As discussed above, it is entirely lawful for one to act as his or her own attorney if he or she chooses. We appreciate the effort involved in plaintiff representing herself in these proceedings and acknowledge that both trial and appellate law can be both mysterious and more than a little confusing. However, when a litigant appears in propria persona, he or she is held to the same restrictive rules of procedure and evidence as an attorney. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639; *Monastero v. Los Angeles Transit Co.* (1955) 131 Cal.App.2d 156, 160-161.)

Plaintiff's opening and reply briefs are not models of clarity. The briefs are repetitive and the arguments made by plaintiff are difficult to follow. Nevertheless, we will attempt to address what we think are plaintiff's claims of error.

B. Admission/Exclusion of Evidence

The first section of plaintiff's opening brief is entitled "The Court Committed Prejudicial Error in Admitting Christa Million-Ven Hearsay Testimony Concerning the Property Taxes of Defendants Wrongful or Illegal Foreclosure and to have My/Plaintiffs Copy of Defendants Exhibits."[9] [*Sic.*]

[9] Although the heading of this section seems to indicate that plaintiff believes that the testimony of Christa Million-Ven was "hearsay," she does not develop or support this statement in the body of her brief. "The appellate court is not required to search the record on its own seeking error." (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) Thus, "[i]f a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived." (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; accord, *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) Plaintiff has not developed this "hearsay" argument, nor made any citations in the record to support it, and her argument is thus waived. However, even if the court were to consider the issue, it does not appear that plaintiff raised a hearsay objection, or any other objection for that matter, at any time during Million-Ven's testimony.

In the body of this section of her brief, plaintiff claims that all of the exhibits Washington Mutual and California Reconveyance introduced at trial are "false statements errors, mistakes and fraud."[10]

Evidence Code section 353 states that "[a] verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: . . . [t]here appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion." This provision also requires a showing that the erroneous admission of the evidence resulted in a miscarriage of justice. (Evid. Code, § 353, subd. (b).)

Plaintiff has not pointed out in the record where she objected to the introduction of defendants' trial exhibits. In fact, it appears that plaintiff made no objections to the introduction of defendants' evidence. At the point where defendants moved for admission of their evidence, plaintiff said nothing. (*Platzer v. Mammoth Mountain Ski Area* (2002) 104 Cal.App.4th 1253, 1260 [party must object at the time exclusion is sought, specifying grounds].) Consequently, her claim of error based on the admission of defendants' trial exhibits is waived.

Plaintiff also complains that the trial court improperly excluded plaintiffs' exhibit No. 5. After the exhibit was offered, the trial court made the following remarks:

"THE COURT: I'm going to reject [plaintiffs' exhibit No.] 5. I'll leave it marked. Unless at some later time it's dissected into discernible documents that are offered for a particular purpose, it does seem to be a compilation that isn't really helpful. All right."

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[10] According to plaintiff, the exhibits are "false," because they either reference "1860 Delancey Drive" instead of plaintiff's actual address of "1861 Delancey Drive," or they show unpaid loan balances that are "discrepancy, usurious, errors, mistakes and fraud." [*Sic.*]

Just before closing arguments, the court indicated which exhibits it was receiving into evidence, as follows:

"THE COURT: I'll receive all defense exhibits, all the plaintiffs [*sic*] exhibits, with the exception--I believe I have already mentioned [plaintiffs' exhibit No.] 5 was not relevant."

Plaintiff did not make an offer of proof or otherwise argue to the trial court why her exhibit No. 5 should have been received into evidence. (See Evid. Code, § 354; *Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1433 [failure to make offer of proof at trial ordinarily precludes appellate review of alleged exclusion of evidence].) Accordingly, plaintiff's claim of error based on the exclusion of plaintiffs' exhibit No. 5 was also waived.

C. Denial of Continuance Request

Plaintiff also objects that the court improperly refused to continue the trial once it granted her request to have her attorney withdraw from her representation. We disagree and find that there was no abuse of discretion, as plaintiff had been previously advised that the trial would not be continued even if her attorney withdrew and she elected to proceed in propria persona.

"The trial court has a wide discretion in granting or denying continuances [of trials], and its decision is not disturbed on review unless a clear abuse of discretion is shown." (*Agnew v. Larson* (1961) 197 Cal.App.2d 444, 450.) "The fact that appellant substituted herself in propria persona at the last minute did not entitle her to any greater consideration than other parties and counsel. [Citation.] Nor did the substitution require that she be granted a continuance to prepare her case." (*Agnew v. Parks* (1963) 219 Cal.App.2d 696, 701-702.)

At the July 23, 2004 settlement conference, plaintiff's counsel requested that he be allowed to withdraw from further representation of the plaintiffs, which the court denied. Plaintiff asked for an "adjustment" of the August 10, 2004 trial date to allow her to obtain

different counsel and prepare for trial. The trial court denied her request, noting that plaintiff had previously substituted counsel, that she had "had about three attorneys in this case," and also noting that the case had been pending for some time. The court advised her in no uncertain terms that, while it was her decision to appear in propria persona at trial, "the case will go to trial on August 10th [2004]. I won't continue it. Do you understand that?" Plaintiff responded, "Okay."

On the day of trial, plaintiff substituted herself in propria persona, as was her right. However, as she had previously been put on notice that the trial would not be continued, the trial court did not abuse its discretion by acting consistently with its prior warning to plaintiff. The court was not obliged to grant a continuance based on her last-minute substitution and insistence on proceeding in propria persona. (*Agnew v. Parks*, *supra*, 219 Cal.App.2d at pp. 701-702.)

D. No Other Showing of Error

" 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The burden is on appellant "to provide an adequate record to assess error." (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) Plaintiff has not sustained her burden on appeal of showing error on the record.

One of plaintiff's principal arguments, both at trial and in the instant appeal, was that Washington Mutual had "no right" to pay the outstanding property taxes and assessments, and thus, had "no right" to seek repayment of those amounts from the borrowers. At the conclusion of the trial, however, the trial court found that the deed of trust permitted Washington Mutual to do both of those things, and that the borrowers were responsible for the assessments. We agree.

Liens for real property taxes, special assessments and public improvement assessments have priority over all private liens, regardless of the time of their creation. (Rev. & Tax. Code, §§ 2192.1, 3712; Gov. Code, § 53935.)[11] Where the trustor fails to pay property taxes when due, the beneficiary may make the payments, add the amount paid to the principal indebtedness and foreclose the security if those amounts are not reimbursed. (*Security-First Nat. Bank v. Lamb* (1931) 212 Cal. 64, 68-69; see also Civ. Code, § 2876.)[12]

Because the borrowers had failed to pay the property taxes in 1999 and 2000, Washington Mutual's security interest in the property was put at risk. Pursuant to the deed of trust, the adjustable mortgage loan rider and Civil Code section 2876, Washington Mutual was authorized to pay the outstanding taxes and assessments and seek reimbursement for those payments from the borrowers. There was no showing that Washington Mutual acted improperly or unlawfully in foreclosing on the property, and judgment was properly entered against plaintiff below.

DISPOSITION

For the foregoing reasons, the judgment is affirmed.

[11] Although liens securing other assessments may not necessarily have priority over a private lien (see Rev. & Tax. Code, § 2192.1), there is no evidence in the record as to exactly what assessments had been levied on the property. Regardless, it is undisputed that no property taxes or assessments were paid on the property in 1999 and 2000.

[12] Civil Code section 2876 provides as follows: "Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists."

Premo, J.

WE CONCUR:

Rushing, P.J.

Duffy, J.